(BRITISH MILITARY ADMINISTRATION)

SUPERIOR COURT.

IN RE ERIC WOODFORD.

[British Officer Court, Wing-Commander F. A. Briggs (President), Major M. D. Weir and Captain J. T. Kerrigan, February 6, 1946]

War Offences Ordinance 1941, Section 3 — Meaning of "Intent to help the enemy" — Burden of Proof — Duress.

Accused was charged under Section 3 of the War Offences Ordinance, 1941. It was proved that the accused who was a technical assistant and a corporal in the Straits Settlements Volunteer Force, on or about the 20th day of February 1942 identified and pointed out to the Japanese Military authorities seven Eurasian members of the Straits Settlements Volunteer Force. The evidence pointed to a conclusion that some of these volunteers were later done to death by the Japanese. At the end of the prosecution case, Counsel for the accused submitted that there was no case for the accused to meet on the ground that the accused had acted under duress and not with any intent to do harm.

Held, (a) that it was necessary for the prosecution to prove that the act of the accused was done with intent to help the enemy and was designed or likely either to give assistance to the military operations of the enemy or to endanger human life;

(b) That the word "help" must receive a reasonable and even a liberal construction in favour of the accused and that there must be something real and substantial in the way of help, something which might be, or might be expected to be, of real value to the enemy;

(c) That where the facts proved by the prosecution were equally consistent with guilt or innocence and there is no balance of probability in either direction, it is the Court's duty to assume that the accused was innocent; and

(d) That where there is no evidence to indicate that the accused's intention was guilty rather than innocent, he must have the benefit of that uncertainty and should not be called on for his defence.

TRIAL.

Major A. P. Jack for the Prosecution.

Claude da Silva (*G. E. N. Oehlers* with him) for the accused.

The Judgment of the Court was delivered by

Wing Commander Briggs—In this case the accused is charged under section 3 of the War Offences Ordinance, 1941, that on or about the 20th day of February, 1942, he did identify and point out to the Japanese military authorities seven Eurasian members of the Straits Settlements Volunteer Force. That he did so is proved and not disputed. The charge proceeds to allege: (i) that this was an act likely to give assistance to the military operations of the enemy, (ii) that it endangered life, and (iii) that it was done with intent to help the enemy. The third allegation, intent to help the enemy, must in any case be proved. In addition it must be proved that the act of the accused was designed or likely *either* to give assistance to the military operations of the enemy *or* to endanger human life. Although it appears that the charge is not laid so widely as that, it could be amended and we consider the case on its widest basis.

A man is deemed to intend the natural consequences of his acts, and it is not enough to consider merely the intention of the accused in the colloquial sense of the word. Can it then be said that the natural consequence of the accused's conduct was that the enemy in fact received "help" from him? We think that in this, a penal statute, the word 'help' must receive a reasonable and even a liberal construction in favour of the accused. To pick up and return a dropped pencil would not be to "help the enemy". There must be something real and substantial in the way of help, something which might be, or might be expected to be, of real value to the enemy. We think the same remarks apply to the word "give assistance and such assistance must be directed to the military operations of the enemy. Thus it would not be sufficient to give him assistance, however valuable, as regards a matter of purely civilian administration, unless thereby his military operations were facilitated.

When the Japanese *first* occupied Singapore (I deliberately stress the word "first") there may have been two points of view as to their probable future conduct. The first is well typified by the evidence of Major Aeria. He thought that if volunteers handed themselves over to the Japanese in organised military formations in the first day or two of the occupation all might be well, but that if they remained at large as civilians they would be hunted down and probably tortured and executed as spies. If the Court could find as a fact that those were the opinions of the accused, or that as a reasonable man he ought to have held those opinions, the case would be different. But another set of opinions was widely held and was not yet shown to be incorrect. Many people believed, as the Japanese propaganda constantly averred, that the quarrel of the Japanese was with the white races and no one else, and that all persons of Asiatic blood or domicile would be treated as liberated friends, not as captured enemies. Such people considered that an Asiatic or Eurasian need only refrain from active opposition to the Japanese regime to be assured of liberty to continue peacefully his civilian avocations. That some at least of the British military authorities shared this view is clear from their encouraging Asiatic and Eurasian military personnel to disband and

resume civil life. The conduct described by the witness Meyer of the "father" who had no hesitation in admitting that his son was a volunteer, and the conduct of Kenneth Campbell, who readily admitted that he was one, although he was from Malacca and probably could not have been easily traced by the Japanese, seem to show that they also took this view. That it was not wholly without foundation may be indicated by events in Java, where it is notorious that many large bodies of Javanese troops, who had came into Japanese hands, were released by the Japanese, disbanded and allowed to resume civilian life, without being forced (at that stage) to make any disloyal promises. It is not necessary for the Court to find expressly that the accused did hold these views; but it is certainly impossible to find that he did not, or that he should not have done so.

Suppose, then, that he did. The Japanese officer told the witness Meyer that Eurasian volunteers must give themselves up, and that if they did not they would be killed if caught. He may not unfairly be presumed to have told the accused the same thing — implying that if they did give themselves up they would come to no harm. It was natural enough that the Japanese should want to trace and take particulars of volunteers, even if they had no intention of imprisoning them or doing them any harm at all. Later the Japanese officer told the men's relatives that they need not worry: the men "would be back in 2–3 days." Only a few months later such a statement would have been disbelieved or distrusted with good reason by every inhabitant of Singapore. But was there any reason why it should have been disbelieved *then*? It would be quite wrong to judge the state of the accused's mind at that date by reference to the bitter wisdom which all acquired later.

The Court can find no reason to suppose that the accused may not honestly and sincerely have believed that, in pointing out the volunteers, he was doing them the best possible service, by facilitating their "registration" and so protecting them from the possiblity of future trouble. He may have thought that they were to do a day or two's work, or attend some parade; but there is no ground for thinking that he expected that they would be put under permanent restraint — much less that they would be done to death. The Court does not hesitate to infer from the evidence that they were done to death, and it extends its sympathy to their relatives and in particular to those of them who have had the ordeal of giving evidence in this case. But the Court is concerned, not so much with their death, as with the question whether the accused did, or could reasonably be expected to, foresee it. It cannot be said with confidence that he ought to have foreseen it, or that he did foresee it. We are inclined to believe that he did not.

If the state of the accused's mind was such as I have described, the Court, holds that his intention to facilitate the mere identification and registration of the volunteers would not amount in law to an express intention to "help the enemy" within the meaning of section 3. The Court also holds that the incarceration and subsequent murder of the volunteers by the the Japanese were not such natural consequences of the accused's acts that he must be deemed to have intended them to occur. We assume that to assist in their permanent incarceration would have been to "help the enemy"; but we consider that no express or constructive intention to do so has been shown.

The points relied on by the prosecution to show such intention are first a statement by the accused that "as he was taken in he would like to have his crowd in with him" or words to that effect. Disregarding the risk that the wording may be inexact and the sense distorted, the Court is still of opinion that these words at their face value are perfectly open to an innocent construction. The words "taken in" do not necessarily import permanent internment or anything like it. Again one must not judge in the light of subsequent knowledge. Without questioning the honesty and good faith of the witness Meyer, the Court feels that he may unconsciously have done so, and that a remark innocently made and interpreted at the time may have come to bear in his mind a more sinister meaning, as time passed and experience of the Japanese was enlarged.

It is suggested that the accused was released as a reward for his services to the Japanese in this matter: but such a view is quite untenable. He was released, as were many others, because he was employed on essential Municipal services which the Japanese could not carry on without their work. The witness Leicester, who was one of the accused's alleged victims and who certainly never collaborated, described this matter and shows that he was released at the same time in the same way, and by the help of the same man, Carlos. Leicester also says that even after his detention he had no clear expectation that the volunteers would be permanently kept interned.

We hold, therefore, that the acts of the accused are not proved to have been designed or likely to give

assistance to the military operations of the enemy. Next it is alleged that his acts endangered human life. Examination of this point shows that the charge is defective. It is not enough that human life was endangered: the section requires, and the charge should therefore aver, that the act of the accused was "designed" or, alternatively, "likely" to endanger life, which is a different matter. The Court is of opinion that the acts of the accused did endanger life and actually resulted in the death of these volunteers; but it is also of opinion that his acts are not shown to have been either deliberately designed or, in the ordinary course of events, likely to produce that result. We are inclined to think that the accused did not believe for a moment that he was putting the volunteers in a position of danger, and that, as matters stood at that time, such an attitude of mind was not unreasonable, rash or perverse. We hold that his acts were not *per se* likely to endanger life, and that in connection with this part of the charge also intent to help the enemy is not proved. The error in the charge has not affected the case and could be corrected if the case were to continue.

Where facts proved by the prosecution are equally consistent with guilt or innocence and there is no balance of probability in either direction, it is the Court's duty to assume that the accused is innocent. So when the question in one of intention, if there is no evidence to indicate that the accused's intention was guilty rather than innocent, he must have the benefit of that uncertainty, and must have it at this stage of the trial, without being called on for his defence. His intention was a question — a difficult question — of fact, and proper for decision by this Court. We now find that there is nothing to indicate that his intention was a guilty intention. We incline to think that it was innocent.

The question of duress has been mentioned in the case. We wish to emphasize that this point has not influenced our decision in any way. Duress is a matter to be proved by the party alleging it. It has not been proved in this case. Whether duress can ever afford a defence in cases of treason or treachery is a question which we leave undecided. The accused may have considered that he had no alternative but to act as he did: but we do so decide, and the question of compulsion has not affected our decision that the accused's conduct is not proved to have been criminal.

The accused is acquitted and discharged.